



January 9, 2019

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California Department of Water Resources
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Cassandra Enos-Nobriga
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Email:
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Re: Contra Costa County and Solano County Comments on DWR's SWP Water Supply Contract Amendments for Water Management and California WaterFix DEIR

Dear Director Nemeth and Ms. Cassandra Enos-Nobriga:

Contra Costa County, Contra Costa County Water Agency and Solano County (Counties) have reviewed the State Water Project (SWP) Water Supply Contract Amendments for Water Management and California WaterFix Draft Environmental Impact Report (DEIR) released for public comment and review by the California Department of Water Resources on October 26, 2018.

Our two counties include large areas of the nationally-significant Sacramento-San Joaquin Delta. Contra Costa County borders on Old River to the east and the County's entire northern border is bounded by a waterfront that flows from the Delta to the Bay. Contra Costa County is the ninth most populous county in California, with more than 1.1 million residents. Solano County borders on the Sacramento River in the south-east and extends west to Vallejo and northwards to just south of Davis and Winters. It includes the southern portion of the Yolo Bypass and Cache Slough complex. Solano County is the twentieth most populous county in California, with more than 440,000 residents. Many of our residents rely on the Delta for their municipal, industrial and agricultural irrigation water supplies, for their livelihood, and recreation.

The Counties have the following comments on the DEIR.

1. The Lead Agency has Improperly Piecemealed the Full Proposed Project

The DEIR is inadequate under the California Environmental Quality Act (CEQA) because it piecemeals the actual project which is to plan, analyze, design, fund and construct the WaterFix project. (See 14 C.C.R. § 15378(a) (defining “project” for CEQA purposes as “the whole of the action”); see generally *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376.)

DWR currently is involved with four separate sets of environmental documents and decisions for the same WaterFix project.

- WaterFix Final EIR and WaterFix Draft Supplemental EIR.
- SWP Water Supply Contract Amendment Draft EIR (needed to coordinate sharing the costs of paying for WaterFix)
- SWP Contract Extension Final EIR (needed to be able to raise bond funding for WaterFix)
- Addendum to the Coordinated Operation Agreement (COA) – DWR has incorrectly decided they do not need to prepare an EIR but the U.S. Bureau of Reclamation (Reclamation) has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI)

These four “projects” are all parts or pieces of the same WaterFix project and must be analyzed as one project.

As noted in several places in the DEIR, one of the project objectives for the SWP Water Supply Contract Amendments is to provide “*a fair and equitable approach for cost allocation of California WaterFix facilities to maintain the SWP financial integrity*” (page ES-3) and establish “*California WaterFix facilities allocation factors based on [Public Water Agencies] participation percentages to be used for repayment of planning, construction, operation and maintenance costs associated with California WaterFix*” and identify “*the methods of calculating costs and repayment of costs for California WaterFix.*” (page ES-4).

It is clear that the amendments and extension of the SWP contracts are a necessary component of the WaterFix project. As discussed on DWR's Water Supply Contract Extension webpage¹, “*the majority of the capital costs associated with the development and maintenance of the SWP is financed using revenue bonds. These bonds have historically been sold with 30-year terms, but such bonds have not been sold with maturity dates that extend beyond the year 2035, the year the contracts begin to expire.*” The proposed contract extensions “*will allow DWR to again sell bonds with 30-year terms or longer, commensurate with the economic life of the project being financed, thus ensuring the debt service on these bonds remains affordable to SWP Contractors and their water customers.*”

¹ <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>

In other words, the SWP water contractors will not be able to raise the necessary funding at affordable rates to construct and operate the WaterFix project without the proposed 50-year contract extensions.

It is also important to note that project Alternative 6 analyzed in the Draft EIR would only allow water transfers and exchanges after the California WaterFix Facilities are completed and operational (page 7-22). As stated on page 7-22 of the Draft EIR, *“Alternative 6 would provide a fair and equitable approach for cost allocation of California WaterFix facilities to maintain the SWP financial integrity based on the [Agreement in Principle].”*

On page 7-22, DWR attempts to argue that *“Alternative 6 would not build new or modify existing SWP facilities”* and *“would not change the water supply delivered by the SWP as SWP water supply would continue to be delivered to the PWAs consistent with current Contracts terms.”* However, Alternative 6 depends on completion of new SWP facilities (the north Delta intakes and twin or single tunnels and new Byron Tract forebay) and to be cost-effective the WaterFix project would need to improve water supply reliability for the SWP which would change SWP water supplies relative to the WaterFix no action alternative. DWR's arguments in the DEIR (page 7-22) are therefore disingenuous.

The Draft EIR is also inadequate because it fails to analyze and disclose SWP and CVP operations after completion of the proposed WaterFix project, which was a specific component of Alternative 6. A new environmental analysis must be prepared that analyzes and discloses and fully mitigates all significant adverse impacts of the proposed project after completion of the WaterFix project.

The DEIR must also consider the proposed project under future conditions and include the effects of increased population, climate change and sea level rise. In the Addendum to the COA Environmental Assessment A, Reclamation compares the Proposed Action with the No Action under existing conditions and considers no other alternatives. The COA EA fails to allow for Climate Change or the SWRCB's proposed flow objectives (WQCP Update).

Similarly, DWR proposes to extend the 29 SWP Contracts through December 31, 2085 (currently the contracts begin to expire in 2035). DWR improperly failed to analyze and disclose the adverse environmental impacts that potentially occur due to SWP operations to meet those SWP Contract water demands under future conditions with sea level rise and other climate change effects.

The Water Supply Contract Amendment project is a key component and inseparable from the full WaterFix proposed project. DWR must analyze and disclose, as one project, amendments and extensions to the SWP water supply contracts with and without changes to the COA and with and without a range of alternatives for the WaterFix project. These analyses must be done for existing conditions and for future conditions over the duration of the project (*i.e.*, if not through 2085, through at least 2060 which was the late long-term condition for the Bay Delta Conservation Plan environmental analyses.)

A new Draft EIR and EIS encompassing all these aspects of the WaterFix project must be prepared to analyze, disclose and fully mitigate all significant adverse environmental impacts. The new Draft EIR/EIS must then be released for public review and comment.

2. The Proposed Project will have significant but avoidable adverse impacts on Groundwater Hydrology and Water Quality

The current Draft EIR for the SWP contract amendments finds that transfers and exchanges from agricultural to municipal and industrial (M&I) PWAs could result in an increase in groundwater pumping resulting in a net deficit in aquifer volume or lowering the local groundwater table in some areas of the study area with resulting land subsidence (page 5-10-19 et seq.). The Draft EIR finds that this would result in potentially significant impacts on groundwater hydrology and water quality that would remain significant and unavoidable (Table ES-2 on page ES-13).

This is unacceptable. Groundwater subsidence, especially in the San Joaquin Valley, is already significant and is causing severe disruptions to water and transportation infrastructure. Any project impacts from WaterFix, the COA changes and SWP contract changes, are avoidable and must be fully mitigated.

A new Draft EIR/EIS must be prepared that commits to full mitigation of reduced groundwater storage and subsidence and the new DEIR/EIS must then be released for public review and comment.

3. The Proposed Project would have significant adverse impacts on Surface Water Hydrology and Water Quality

On page 5-16-15, under 5.16.4.1 Methods of Analysis, DWR acknowledges that "*portions of the proposed amendments (amendments related to water transfers and water exchanges) may result in changes to the frequency, duration, and timing of Table A and/or Article 21 water moving among the PWAs that may impact surface water hydrology and quality.*" However, the Draft EIR does not attempt to full analyze and disclose the magnitude of these adverse surface water hydrology and water quality impacts.

DWR argues that the precise location, amount and timing of future water transfers and exchanges are not known at this time, this surface water hydrology and quality analysis is programmatic, focusing on the types of reasonably foreseeable changes in the physical environment that may occur due to implementation of the proposed amendments (page 5-16-15). DWR states that individual PWAs will address these significant adverse impacts at some future time through "*the appropriate project-level CEQA documentation.*"

This is unacceptable because there is no CEQA commitments in the Draft EIR that will ensure such project-level CEQA documentation will ever be completed. In many cases, PWA's may

rely on single-year transfers and avoid having to complete detailed CEQA environmental reviews and mitigation.

A new Draft EIR and EIS encompassing all these aspects of the WaterFix project must be prepared to analyze, disclose and fully mitigate all significant environmental impacts and where impacts are not disclosed because of programmatic analyses incorporate legally binding environmental commitments to ensure that the PWAs do complete full analyses at the project-level before any water transfers and exchanges can take place. The new Draft EIR/EIS must then be released for public review and comment.

4. DWR must include Amendments that Encourage Water Conservation and Future Adjustments to Reduced Availability of Water from the Delta

The 2009 Delta Reform Act established that it is “(t)he policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts. (Cal. Water Code section 85021.)

SWP Contract commitments for another 50 years through 2085 for amounts of water well in excess of water that is actually available and surplus to the needs of the Bay-Delta ecosystem is inappropriate. There is also a great deal of uncertainty regarding availability of Delta water in the future given the continuing decline of the Delta ecosystem and global climate change.

The SWP Contracts should be amended to include additional contract off-ramps and requirements for exporters to meet specific and measurable SWP supply reductions with developed projects in the areas of conservation, wastewater reuse, desalination, and local water supply projects, consistent with the Delta Stewardship Council's Delta Plan WR Policy 1 (23 CCR section 5003) – Reduce Reliance on the Delta through Improved Regional Water Self-Reliance. The amount of Delta water available for export in 2085 is unknown but the SWP Contracts must allow for the probability of significant reductions in the Delta water supply.

5. DWR needs to work with Delta Representatives in Developing the New Draft EIR/EIS

It is especially important that Delta representatives have a seat at the table for development of Bay-Delta projects like WaterFix and negotiations of voluntary settlement agreements intended to restore and sustain the Delta ecosystem and the ecosystem of the upstream tributaries.

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Contra Costa County, Contra Costa County Water Agency and Solano County remain willing and available to work with the DWR and other WaterFix proponents to develop a real solution to the current problems of the Central Valley and Bay-Delta system, one that will contribute to achievement of the co-equal goals and improvement of water quality in the Delta, and is consistent with the 2009 Delta Reform Act and Delta Plan.

If you have any questions, please contact Ryan Hernandez at (925) 674-7824, or Bill Emlen at (707) 784-6765.

Sincerely,



Ryan Hernandez, Manager
Contra Costa County Water Agency
Contra Costa County



Bill Emlen, Director
Resource Management Department
Solano County

cc: Contra Costa County Board of Supervisors
Solano County Board of Supervisors
Senator Dianne Feinstein
Senator Kamala Harris
Rep. Mark DeSaulnier
Rep. John Garamendi
Rep. Jerry McNerney
Rep. Mike Thompson
Rep. Jared Huffman
Senator Bill Dodd
Senator Nancy Skinner
Senator Steve Glazer
Assemblymember Cecilia Aguiar-Curry
Assemblymember Rebecca Bauer-Kahan
Assemblymember Jim Frazier
Assemblymember Tim Grayson
Assemblymember Buffy Wicks
John Kopchik, Director, Department of Conservation and Development (Contra Costa County)